Supreme Court, U. S.
FILED
JUL 17 1975
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM

No. 74-1568

Wind River Indian Education Association, Inc., et al.,
Petitioners,

vs.

Alfred Ward, et al.,
Respondents.

BRIEF OF RESPONDENT WYOMING STATE COMMITTEE FOR SCHOOL DISTRICT ORGANIZATION IN SUPPORT OF WIND RIVER INDIAN EDUCATION ASSOCIATION'S PETITION FOR WRIT OF CERTIORARI

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INDEX

Page

SUMMARY OF ARGUMENT 1

ARGUMENT:

I. Respondent State Committee's Order Providing For A Public Unified School District On The Reservation Was Reasonable Because Of The Circumstances And Was For Proper Educational Purposes 7

CONCLUSION 13

TABLE OF CITATIONS

Cases:

Cherokee Nation v. Georgia,
30 U.S. 1 (1831) 12

Geraud v. Schrader,
531 P. 2d 872 (Wyo. 1975) 7,11

Johnson v. Schrader,
507 P. 2d 814 (Wyo. 1973) 3,8

Keyes v. School District No. 1,
413 U.S. 189 (1973) 11

Lund v. Schrader,
492 P. 2d 202 (Wyo. 1971) 8

McClanahan v. Arizona State Tax Commission,
411 U.S. 164 (1973) 12

Morton v. Mancari,
417 U.S. 535 (1974) 12

North Carolina State Board of Education v. Swann,
402 U.S. 43 (1971) 11

Swann v. Charlotte Mecklenburg Board of Education,
402 U.S. 1 (1971) 10

	Page
U.S. v. Mazurie, ____ U.S. ____, 95 S. Ct. 710 (1975)	4,12
Worcester v. Georgia, 6 Pet. 515 (1832)	12

CONSTITUTIONAL PROVISIONS

1. Article VII, Section 10, Wyoming Constitution	7,11,12

STATUTORY PROVISIONS

1. W.S. 21.1-106	9
2. W.S. 21.1-107	3
3. W.S. 21.1-109	3,4,5,8,9
4. W.S. 21.1-112	3,8
5. W.S. 21.1-118	3
6. The Wyoming Education Code of 1969 — Chapter 111, Session Laws of Wyoming 1969 (W.S. 21.1-1 through 21.1-289)	2,3
7. Chapter 264, Section 1, Session Laws of Wyoming 1971	4
8. Chapter 33, Section 1, Session Laws of Wyoming 1975	4

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SUMMARY OF ARGUMENT

Respondent State Committee's order for a public unified school district on the Wind River Reservation was issued for proper educational purposes in response to the special educational needs of Indian students on the Wind River Reservation and is justified under the "neighborhood school" concept, as established in decisions of this Court.

STATEMENT OF THE CASE

This case is concerned with the reorganization of public school districts in the County of Fremont, State of Wyoming, by an agency of the State of Wyoming, Respondent State Committee for School District Organization. Specifically, the case deals with a Decision and Order by Respondent herein to create a public unified school district (kindergarten through grade twelve) on the Wind River Reservation. The enrollment in this unified school district would be predominately Indian. The Order of the Respondent Committee is based upon facts that Indian students on the Wind River Reservation have special educational needs and a unified school district on the Reservation best considers the education, convenience and welfare of the Indian students in that area. The creation of a public unified school district would hopefully correct educational inadequacies in public education afforded Indian students. The goal of Respondent State Committee is to provide those Indian students with an education that would enable them to live, work and function in society.

Respondents herein are members and former members of the Wyoming State Committee for School District Organization (hereinafter referred to as the State Committee). Present members include: Robert G. Schrader, Wyoming State Superintendent of Public Instruction (an elective office), Katherine Townsend, Edward Hunter, Wayne Vanderpoel, Jack Pearson, and Lynn Simons. Former Committee members include: Vernon Delgado, Harriet McNeil, Jes R. Jessen, and Dan Kinnaman. Wyoming law provides that members of the State Committee are also members of the Wyoming State Board of Education, with the exception of State Superintendent Schrader, who is an ex-officio member.

In 1969 the Fortieth (40th) State Legislature enacted the Wyoming Education Code of 1969. Chapter 111, Session

Laws of Wyoming 1969; W.S. 21.1-1 through 21.1-289. This action constituted a comprehensive codification and revision of laws in Wyoming relating to elementary and secondary public education. Contained within the Code is a statutory procedure for the reorganization of public schools into unified school districts — kindergarten through grade twelve. W.S. 21.1-105 through 21.1-135.

The procedure for the organization of schools may be briefly summarized as follows: In 1969 a county planning committee for the organization of school districts (hereafter referred to as County Committee) was formed in each of Wyoming's twenty-three (23) counties. W.S. 21.1-107(d). The County Committee's duties are set out in W.S. 21.1-118. A County Committee was to submit a plan of organization to the Respondent State Committee for approval or rejection. This plan would combine two or more school districts, subdivide one or more school districts or combine the foregoing. The plan would provide for at least one or more unified school districts in the county.

The Respondent State Committee could either accept or reject the plan or organization. W.S. 21.1-112. If the plan was approved, the State Committee would enter an Order bringing the school district or districts into existence. If the plan was rejected, the Respondent would remand the matter to the County Committee with recommendations for making the plan acceptable. When reviewing a plan, the State Committee would determine whether it (the plan) met the statutory criteria for school organization found in W.S. 21.1-109. **Johnson v. Schrader**, 507 P. 2d 814 (Wyo. 1973). The State Committee was overseeing and participating in all school reorganization in the State of Wyoming. Except for Fremont County, all public schools in Wyoming were to be reorganized by January, 1972.

As of this date, all public school districts in the State of Wyoming have been reorganized into unified school districts

except for Fremont County, wherein the Wind River Reservation is located. (The Wind River Reservation was described by Justice Rehnquist in **United States v. Mazurie**, ____ U.S. ____, 95 S. Ct. 710 (January 21, 1975)).

In Fremont County there are sixteen public school districts, three of which are elementary districts located on the Wind River Reservation. These three districts (School District 14 — Mill Creek; School District 21 — Fort Washakie; and School District 38 — Arapahoe) are attended predominately by Indian students. The Shoshone and Arapahoe tribes consented to Wyoming's jurisdiction for school purposes in 1954, and these elementary school districts have been part of the State public school system since that time.

From the beginning of the State school reorganizational process, the three elementary schools on the Reservation were treated differently by the Wyoming Legislature. As enacted, W.S. 21.1-109(b) provided that, "The entire state shall be divided into unified school districts excepting those elementary school districts principally located within the Wind River Indian Reservation and supporting a high school." In 1971, this law was amended to read, "The entire state shall be divided into unified school districts, any county which has been delayed by previous statutory exceptions may have until January 1, 1973, to complete its organization." Chapter 264, Section 1, Session Laws of Wyoming 1971. In 1975, the statute was further amended to extend the date for reorganization to April 15, 1977. Chapter 33, Section 1, Session Laws of Wyoming 1975.

The Fremont County Planning Committee submitted to the Respondent State Committee four (4) plans for the reorganization of its schools. All the plans were rejected. During such process, it became increasingly evident to the State Committee that the Indian students in School Districts

14, 21 and 38 had special educational needs which should be recognized and provided for in any plan of organization. Information provided to the Respondent indicated said problems with a primary emphasis on a drastic drop-out rate of secondary Indian students in the high schools off the Reservation. (School Districts 14,21 and 38 are elementary schools and do not have high schools. High school age Indian students are forced to attend either the off-Reservation high schools in Lander or Riverton, Fremont County, Wyoming, or the out-of-state Federal Indian high schools.)

In November of 1971, the Respondent rejected a plan submitted by the County Committee providing for five (5) unified school districts. Aside from other objections to the plan, the State Committee had become aware of serious educational problems of Indian students through statements and information given and provided by the Wind River Indian Education Association, Inc., the Petitioner in this action. In its rejection of the plan, Respondent recommended that the County Committee in any future plan of organization give special attention to the educational needs and opportunities of those pupils residing in School Districts 14, 21 and 38.

In July of 1972, the State Committee rejected a plan submitted by the County Committee which would have established four (4) school districts in Fremont County. In this proposal the three (3) elementary school districts on the Reservation were not considered as a separate unit but rather combined with other proposed off-Reservation districts. One of the reasons cited by Respondent for the rejection of the plan was that it did not provide for equal educational opportunities in the proposed school districts. One standard in the reorganization criteria is that "Each plan of organization shall include provisions for educational opportunity and services as nearly equal as possible in all areas of each unified school district." W.S. 21.1-109(f). The State Committee

found that the plan did not contain provisions which provided for the special educational needs and opportunities of the students residing in School Districts 14, 21 and 38.

In November of 1972, a plan for one (1) school district for Fremont County was rejected. The reason for the rejection was the size of Fremont County and the difficulty that would result in the administration of such as a single school district. With regard to the special educational needs of the Indians, the State Committee recommended to the County Committee that a plan must provide for a secondary school on the Reservation designed to meet the special needs of Indian children. Further, it was recommended that the Indian people affected have control over the operation and management of the educational program for Indian children. In effect, the State Committee recommended that a unified school district be created on the Reservation.

In March of 1973, the State Committee rejected a plan which would have reorganized Fremont County into six (6) school districts. The plan was rejected by the State Committee because of the difference in the assessed valuation per pupil in the school districts. Respondent's rejection was based upon the fact that one proposed district combined School Districts 14 (Mill Creek) and 38 (Arapahoe) with a resultant assessed valuation per pupil of merely $4,201.00. The disparity is evident when compared with another proposed district having an assessed valuation per pupil of $21,999.00.

The time having lapsed for the County Committee to submit an acceptable plan, the State Committee in March of 1973 entered a Decision and Order reorganizing Fremont County into four (4) unified school districts. The implementation of this Order was enjoined pending resolution of legal issues.

The State Committee's Order would have created a public unified school district composed of School Districts

14 (Mill Creek), 21 (Fort Washakie) and 38 (Arapahoe). There would have been a public secondary school (high school) in the school district. The Order also contained a provision recognizing the special educational circumstances existing in the proposed district, and provided that every secondary student attending school therein be afforded the opportunity to attend the secondary school of his or her choice in Fremont County.

The State Committee's Order was appealed to Fremont County District Court. The Wind River Indian Education Association intervened on behalf of the State Committee's Order as it pertained to the proposed public school district composed of School Districts 14, 21 and 38. The State Committee's Order was upheld by the district court on February 14, 1974.

An appeal was taken to the Wyoming Supreme Court. The Wyoming Supreme Court held that there was no authority in the State or County Committee to set up a separate Indian Reservation school district, citing Article VII, Section 10, Wyoming Constitution. **Geraud v. Schrader**, 531 P. 2d 872 (Wyo. 1975).

ARGUMENT

I.

RESPONDENT STATE COMMITTEE'S ORDER PROVIDING FOR A UNIFIED SCHOOL DISTRICT ON THE RESERVATION WAS ISSUED FOR PROPER EDUCATIONAL PURPOSES IN RESPONSE TO THE SPECIAL EDUCATIONAL NEEDS OF INDIAN STUDENTS AND IS JUSTIFIED UNDER THE "NEIGHBORHOOD SCHOOL" CONCEPT.

There are serious educational problems of Indian secondary students who reside on the Wind River Reservation and

attend high school off the Reservation. The question arises as to how the Respondent is going to be able to resolve these problems.

Respondent State Committee had an integral role in the reorganization of all school districts in twenty-two (22) counties in the State of Wyoming. Respondent's approval of different plans of organization and subsequent orders for implementation were required by W.S. 21.1-112(g), before the new school districts could come into existence. The State Committee's orders were upheld in two (2) different counties by the Supreme Court of Wyoming. **Lund v. Schrader**, 492 P.2d 202 (Wyo. 1971) and **Johnson v. Schrader, supra**.

In Fremont County, within which the Wind River Reservation is located, the Respondent ordered a four-district plan to be implemented. In the judgment of the Respondent, which has expertise in educational matters in Wyoming, four unified school districts met the statutory criteria as set out in W. S. 21.1-109. One of these districts would have been located on the Reservation.

The unified school districts on the Reservation would have combined Elementary School Districts 14 (Mill Creek), 21 (Ft. Washakie) and 38 (Arapahoe). Arapahoe Indian students attend School Districts 14 and 38; Shoshone Indian students are enrolled in School District 21. There is no public high school for any of these three schools. The record in this cause shows that there is not a significant drop-out rate at any of these three schools. The school boards are composed of Indian residents of the respective districts.

The school district on the Reservation, had it come into existence, would have been subject to the same Wyoming laws and Wyoming State Board of Education rules and regulations as other public school districts in the State of Wyoming.

Respondent during the process of attempted reorganization in Fremont County was presented with facts through oral and written statements which illustrated special educational problems of Indian students who attended high schools off the Reservation in Lander and Riverton, Wyoming, and out-of-state Federal Indian schools. This information was part of the record in the case before the Wyoming Supreme Court. Some of those facts demonstrated: a staggering drop-out rate of Indians from the Reservation who attended high school off the Reservation; low achievement rates of these Indian pupils in the high schools off the Reservation; and a very low participation of these Indian students in extra-curricular activities.

The information before the Respondent also showed special educational needs of Indian students. An elucidation of these special needs was given by an expert witness on minority group education, Dr. Donald A. Erickson. In addition, the record will show that the Fremont County Planning Committee, in a plan submitted to Repondent, made a statement to the effect that the County Committee was unable to ascertain what these special educational needs were and was, therefore, incapable of making provision for them in any plan of organization.

Respondents' Decision and Order in Fremont County was an attempt to correct the special problems in Indian education which were known to it. In terms of its statutory mandate, a public school district on the Reservation comported with the criteria for school district organization set out in W.S. 21.1-109. Of importance here is W.S. 21.1-109(f), which provides, "Each plan of organization shall include provisions for educational opportunities and services as nearly equal as possible in all areas of each unified school district." Further, objectives of reorganization are found in W.S. 21.1-106, which provides, "The legislature of the State of Wyoming hereby declares that this chapter is passed to

provide machinery for the organization of the school districts in this state whereby school districts can be organized to: provide an improved and more equalized educational opportunity for all of the pupils in the State."

The Respondent was cognizant of its responsibility to educate "all" of the school age youth in Wyoming. Simply put, Respondents' Order attempted to carry out this responsibility with regard to Indian students.

Respondent believes that the issue of a public high school on Wind River Reservation is important to the reorganization of all schools in Fremont County. Without a definitive ruling on this issue, school reorganization cannot be truly effectuated. There are now three (3) separate elementary school districts on the Reservation. The question arises as to whether these school districts are segregated so as to cause the State of Wyoming to take affirmative action to correct the situation. Respondent requires guidance from this Court. The resolution of this issue is critical not only to Wyoming but to every state which has an Indian reservation within its exterior boundaries wherein public schools are located.

Respondent submits that its Order was reasonable because of the special circumstances. Its Order was for legitimate and desirable educational purposes.

Turning to the constitutional issue of the unified school district on the Reservation, Respondent relies upon **Swann v. Charlotte—Mecklenburg Bd. of Ed.**, 402 U.S. 1 (1971), wherein this Court said:

> "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes." (402 U.S. at 28).

It is therefore desirable that these Indian students should attend the elementary and secondary schools nearest their homes.

In terms of population, geography, and educational objectives, the unified school district is justified.

The Order of Respondent is consistent with the neighborhood school concept. The record is barren of any segregatory intent on behalf of Respondent. **Keyes v. School District No. 1**, 413 U.S. 189 (1973). Rather, the creation of this school district was for sincere educational objectives. In the formulation of such objectives, school authorities have wide discretion. **North Carolina Bd. of Ed. v. Swann**, 402 U.S. 43, 45 (1971).

The decision of the Wyoming Supreme Court would appear to preclude a challenge because it construes a Wyoming constitutional provision. That Court said:

> "It is concluded that there is no authority in the state committee or any county committee to set up a separate Indian reservation school district, as done. Art. VII, Sec. 10, Wyo. Const., states that, 'In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race or color.'" (531 P. 2d at 882).

This holding fails to consider several factors. First is whether the pattern or design on behalf of the creating authority is an attempt to fence in or to segregate a race because of invidious racial motives. **Keyes v. School District No. 1, supra,** characterizes this as segregatory intent on behalf of the creating authority. Second is the neighborhood school concept which is accepted by this Court. In other words, the

Wyoming Constitutional provision must be analyzed in terms of federal case law on segregation.

There is one final point which the Wyoming Supreme Court failed to consider in its holding. Nowhere in the decision is reference made to the special status afforded Indians by the United States government and decisions of this Court. Indians are treated differently from other citizens in the United States. Both **Cherokee Nation v. Georgia**, 30 U.S. 1 (1831) and **Worcester v. Georgia**, 6 Pet. 515 (1832), illustrate this point. Chief Justice Marshall in **Worcester** recognized that Indian tribes are independent, distinct communities, thereby recognizing the sovereignty of the tribes. **Worcester v. Georgia**, 6 Pet. at 557. In a recent case before this Court, **United States v. Mazurie,** _____ U.S. _____ (Decided January 21, 1975), Justice Rehnquist, writing for a unanimous court stated:

> "Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." (95 S. Ct. at 717).

McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973), shows the different aspects of tribes in the Tribal-State relationship. As to employment preferences, **Morton v. Mancari**, 417 U.S. 535 (1974), shows that the classification of Indians as a race for purposes of employment is constitutional.

The Wyoming Supreme Court did not consider the weight of the foregoing authorities when construing the Wyoming constitutional provision. If it had, we submit that the racial characterization of the unified school district on the Reservation would not have been within the prohibitions stated in Wyoming Constitution, Article VII, Section 10. There can be no State constitutional violation in view of the

treatment by the federal government of Indians as a separate race.

Finally, Respondent recognizes that other respondents who support the opinion of the Wyoming Supreme Court might contend that adequate State grounds exist, and, therefore, the petition should be dismissed. Respondent's only comment is that if this is so, the secondary students on the Reservation are without a remedy to correct the educational problems which currently exist. Without clarification from this Court, Respondent is unable to effect the proper education of these Indian students, and for these reasons, Respondent State Committee supports the petition for certiorari.

CONCLUSION

The Respondent State Committee's Order creating a public unified school district on the Wind River Reservation is in the best interests of the Indian students therein. Respondent's Order was for legitimate educational purposes and desirable from a public policy standpoint. Respondent State Committee supports Petitioner's request that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Wyoming entered in this cause.

Respectfully submitted,

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